

ORDINANCE 357

**CITY OF ST. FRANCIS
ANOKA COUNTY**

**AN ORDINANCE AMENDING CITY CODE CHAPTER 7, SECTION 5, SUBDIVISIONS
3, 7, 9, 10, 14 AND 20 RELATING TO SMALL CELL WIRELESS FACILITY**

THE CITY COUNCIL OF THE CITY OF ST. FRANCIS, ANOKA COUNTY, MINNESOTA,
ORDAINS:

Changes in the following sections are denoted with an underline for new text or a ~~strikethrough for deleted language~~. Renumbering and updated references shall occur throughout the Code as needed when sections or subsections are added or deleted.

Section 1. Chapter 7, Section 5, Subdivision 3 – Definitions, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-3. Definitions.

The following definitions apply to this chapter of this code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

- A. **Abandoned Facility** means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service.
- B. **Applicant** means any person requesting permission to excavate or obstruct a right-of-way.
- C. **City** means the City of St. Francis, Minnesota. "City" also means its elected officials, officers, employees and agents.
- D. **Commission** means the State Public Utilities Commission.
- E. **Congested Right-of-Way** means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes § 216D.04, subd. 3, over a continuous length in excess of five hundred (500) feet.
- F. **Construction Performance Bond** means any of the following forms of security provided at permittee's option:
 - 1. Individual project bond;
 - 2. Cash deposit;
 - 3. Letter of Credit in a form acceptable to the City;

4. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.
- G. **Degradation** means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.
- H. **Degradation Cost subject to Minnesota Rules 7819.1100** means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- I. **Degradation Fee** means the estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost. This fee is in addition to the permittee's obligation to fully restore the right-of-way.
- J. **Department** means the department of public works of the City.
- K. **Department Inspector** means any person authorized by the City to carry out inspections related to the provisions of this chapter.
- L. **Director** means the director of the department of public works of the City, or her or his designee.
- M. **Delay Penalty** is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
- N. **Emergency** means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
- O. **Equipment** means any tangible asset used to install, repair or maintain facilities in any right-of-way.
- P. **Excavate** means to dig into, directionally bore, or in any way remove or physically disturb or penetrate any part of a right-of-way.
- Q. **Facility or Facilities** means any tangible asset in the right-of-way required to provide Utility Service.
- R. **Five-year project plan** shows projects adopted by the City for construction within the next five years.
- S. **High Density Corridor** means a designated portion of the public-right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
- T. **Hole** means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

- U. **Local Representative** means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
- V. **Management Costs** means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to this chapter.
- W. **Obstruct** means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- X. **Patch or Patching** means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.
- Y. **Pavement** means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
- Z. **Permit** has the meaning given "right-of-way permit" in Minnesota Statutes Section 237.162.
- AA. **Permittee** means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this chapter.
- BB. **Person** means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate or political.
- CC. **Probation** means the status of a person that has not complied with the conditions of this chapter. (Note: This paragraph is included as an option for your City.)
- DD. **Probationary Period** means one year from the date that a person has been notified in writing that they have been put on probation. (Note: This paragraph is included as an option for your City.)
- EE. **Public Right-of-Way** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service. Public right-of-way includes outlots, parks and drainage and utility easements.

- FF. **Registrant** means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies, or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.
- GG. **Restore** or **Restoration** means the process by which an excavated right-of-way and surrounding area, including pavement, foundation, sidewalk and trail is returned to the same condition and life expectancy that existed before excavation.
- HH. **Restoration Cost** means the amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
- II. **Right-of-Way User** means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
- JJ. **Service** or **Utility Service** includes (1) those services provided by a public utility as defined in Minn. Stat. 21613.02, subd. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.
- KK. **Service Lateral** means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

LL. Small Wireless Facility.

i. A wireless facility that meets both of the following qualifications:

- a. Each antenna is located inside an enclosure of no more than 6 cubic feet in volume or could fit within such an enclosure; and
- b. All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume. This equipment does not include electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and equipment concealed from public view within or behind an existing structure or concealment.; or

ii. A micro wireless facility

- a. "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

- i. Equipment associated with wireless service;
- ii. A radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and
- b. A small wireless facility.
 - 1. “Wireless facility” does not include:
 - a. Wireless support structures;
 - b. Wirelines backhaul facilities; or
 - c. Coaxial or fiber-optic cables
 - i. Between utility poles or wireless support structures, or
 - ii. That are not otherwise immediately adjacent to or directly associated with a specific antenna.
- c. Micro wireless facility.
 - i. “Micro wireless facility” means a small wireless facility that is no longer than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

~~MM.LL.~~ **Supplementary Application** means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

~~NNMM.~~ **Temporary Surface** means the compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation.

~~OO NN.~~ **Trench** means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

~~PP OO.~~ **Telecommunication right-of-way user** means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 21613.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter.

Section 2. Chapter 7, Section 5, Subdivision 7 – Permits requirement, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-7. Permit requirement.

- A. *Permit Required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so.
1. *Permit.* A permit is required by a registrant to excavate or directionally bore that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 2. Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- B. *Permit Extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.
- C. *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subd. 3 and notwithstanding Chapter 7, Section 2 of this Code, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.
- D. *Permit Display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Section 3. Chapter 7, Section 5, Subdivision 9 – Issuance of permit and conditions, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-9. Issuance of permit and conditions.

- A. *Permit Issuance.* If the applicant has satisfied the requirements of this chapter, the City shall issue a permit.
- B. *Conditions.* The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.
- C. Small Wireless Facility Conditions. The erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height

- indicated in the applicable permit application.
2. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 3. No wireless facility may extend more than 10 feet above its wireless support structure.
 4. Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements as set in the design and review guidelines between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
 5. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the City's aesthetic standards regarding wireless equipment as adopted by the City Engineer. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.
 6. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
 7. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.

D. *Small Wireless Facility Agreement.* A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:

1. Up to \$150 per year for rent to collocate on the city structure.
2. \$25 per year for maintenance associated with the collocation;
 - a. A monthly fee for electrical service as follows;
 - b. \$73 per radio node less than or equal to 100 maximum watts;
 - c. \$182 per radio node over 100 maximum watts; or
 - d. The actual costs of electricity, if the actual cost exceed the foregoing.
 1. The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided that the applicant shall not be additionally required to obtain a license or franchise in order to collocate.

Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant,

E. Action on Small Wireless Facility Permit Applications.

1. **Deadline for Action.** The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

2. **Consolidated Applications.** An application may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- a. are located within a two-mile radius.
- b. consist of substantially similar equipment; and
- c. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. **Extension of Deadline.** The 90-day deadline for action on a small wireless facility permit application may be extended if:

a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

b. The applicant fails to submit all required documents or information, and the city provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information and the city shall have ten days to notify the applicant in writing of any still-missing information.

c. The city and a small wireless facility applicant agree in writing to extend the review period.

Section 4. Chapter 7, Section 5, Subdivision 10 – Permit Fees, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-10. Permit fees.

A. *Permit Fee.* The City shall establish a Permit fee in an amount sufficient to recover the following costs:

- 1. The City management costs;

2. Degradation costs, if applicable;
3. City labor and engineering costs.

B. Small Cell Wireless Facility Permit Fee: The city shall impose a small wireless facility permit fee in and around sufficient to recover:

1. Management costs, and:
2. City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

- B. *Payment of Permit Fees.* No permit shall be issued without full payment of the permit fees.
- C. *Non Refundable.* Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 7-5-20 of this Code are not refundable.
- D. *Application to Franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Section 5. Chapter 7, Section 5, Subdivision 14 – Other obligations, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-14. Other obligations.

- A. *Compliance With Other Laws.* Obtaining a ~~right-of-way~~ right of way or small cell wireless permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- B. *Prohibited Work.* Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. *Interference with Right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

- D. *Trenchless Excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

Section 6. Chapter 7, Section 5, Subdivision 20 – Revocation of permits, of the St. Francis Code of Ordinances is hereby amended to read as follows:

7-5-20. Revocation of permits.

- A. *Substantial Breach.* The City reserves its right, as provided herein, to revoke any ~~right of way or small cell wireless~~ right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
1. The violation of any material provision of the right-of-way permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 3. Any material misrepresentation of fact in the application for a right-of-way permit;
 4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by the City.
- B. *Written Notice of Breach.* If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. *Response to Notice of Breach.* Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the City, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

1. *Cause for Probation.* From time to time, the City may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
2. *Automatic Revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.
3. *Reimbursement of City costs.* If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 7. This Ordinance shall take effect and be enforced from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ST. FRANCIS THIS 20TH DAY OF APRIL, 2026.

APPROVED:

Mark Vogel, Mayor

ATTEST:

Jennifer Wida, City Clerk